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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,280	03/18/2005	Axel Schulte	40098	9762

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ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
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WASHINGTON,, DC 20036

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/601,280

Applicant(s)

SCHULTE, AXEL

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Appeal Brief

1. In view of (a) the Petition Decision of April 15, 2005, which reset the filing date of the present application to March 18, 2005, (b) applicant's amendment to the claims and the substitute specification filed June 30, 2006, and (c) the Second Response, Response, and Third Conditional Brief on Appeal filed on November 8, 2006, PROSECUTION IS HEREBY REOPENED. Examination on the merits is set forth below.
2. To avoid abandonment of the application, appellant must exercise one of the following two options:
 - (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
 - (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.
3. A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



Terrel Morris

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Response to Amendment

4. The amendment filed June 30, 2006, has been entered. Claims 1-9 have been cancelled and replaced with new claims 10-26. [Note applicant's claim 27 has been renumbered claim 26 in accordance with 37 CFR 1.75(f)]. Additionally, the substitute specification filed June 30, 2006, has been entered.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference characters not mentioned in the description: 21, 23, and 25 (Figure 1). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference characters in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office Action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office Action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10-14 and 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 195 32 685 issued to Leopold in view of DE 196 46 318 issued to Hammer and in further view of US 5,753,336 issued to Stull, US 6,298,624 issued to Pacione, and EP 988 808 issued to Celliers et al.

Applicant claims a carpet installation system comprising a carpet having a nap side and a backside of a loopless carpet backing material, a loopless floor material, and a micro-adhesive closing element comprising double-sided interlocking surfaces having protruding interlocking elements for interlocking with the carpet loopless material and floor loopless material. The interlocking elements are configured as fingers with thicknesses at free ends thereof, preferably as mushroom-shaped or plate-shaped heads. Preferably, the heads have concave depressions on the tops thereof, wherein said depressions receives adhesive, such as an acrylate-based adhesive. Additionally, said interlocking elements have at least one of different shapes, different dimensions, and different relative spacings compared to the opposite interlocking surface. The loopless materials may be a felt, fleece, leno weave, knit, or a nonwoven fabric, such as needle-punched felt.

Leopold discloses a floor covering comprised of two layers (abstract). The first layer comprises an upper layer of the face of the floor covering (1) and a lower layer of a felt (2) (abstract). The lower felt layer (2) connects with an underlayer (4) comprised of an “upwards pointing surface with properties which allow it to engage with the felt” (i.e., interlocking elements). The other side of the underlayer (4) may be glued to a floor substrate (5). Note “felt”

as employed by Leopold means a needle-punched nonwoven fabric made of natural and/or synthetic fibers.

Thus, Leopold teaches the presently claimed invention with the exception that (a) the claimed micro-adhesive closing with interlocking elements having a concave depression on the tops thereof, (b) the underlay being double-sided to interlock with the floor substrate in addition to the carpet substrate, and (c) the interlocking elements have at least one of different shapes, different dimensions, and different relative spacings compared to the opposite interlocking surface.

With respect to the first exception, said micro-adhesive closing is known in the art, as evidenced by the Hammer reference. Note applicant's own teaching that the "a micro-adhesive closing element" according to DE 196 46 318 (i.e., Hammer reference) is suitable for the present invention (substitute specification, page 4, 2nd paragraph). The interlocking elements or hooks of Hammer are mushroom or plate-like in shape and have concave depressions on the tops thereof. Thus, it would have been obvious to one skilled in the art to employ the Hammer hooks for the interlocking element material of Leopold, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. One would be motivated to choose the Hammer hooked material for its inexpensiveness and its integration of said interlocking elements with a carrier material.

With respect to the second exception, the knowledge of double-sided carpet underlays are evidenced by Stull, Figures 7 and 8 and Pacione, Figure 31. Thus, it would have been obvious to modify the Leopold invention by providing a double-sided interlocking element underlay material. Motivation to do so would be to provide releasable engagement of the carpet to a

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flooring underlay without the use of an adhesive or a special receiving surface of said flooring underlay.

Regarding the third exception, wherein the interlocking elements have at least one of different shapes, different dimensions, and different relative spacings compared to the opposite interlocking surface, it would have been obvious to have hooked surfaces be different in some manner, such as shape, dimension, and/or spacing in order to provide a difference in peel strength between the two interfaces and /or to allow interlocking with a variety of receiving (i.e., loopless) materials. For example, Celliers discloses a hook fastening material comprising differing hook shapes or dimensions (abstract and pages 3-4, paragraph [0020]). The hook fastener of Celliers is able to effectively engage with different receiving surfaces and exhibits a differential in peel strengths when engaged with said receiving surface (page 2, paragraphs [0007] and [0008]). Therefore, applicant's claims 10-14, 19, and 23-25 are rejected as being obvious over the cited prior art.

Regarding claims 20-22, while the cited prior art fails to explicitly teach the claimed loopless materials, said materials would have been readily obvious to one of ordinary skill in the art. As long as a material is loopless and capable of engaging with the interlocking elements or hooks, said loopless material would be suited for the invention. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 20-22 are rejected as being obvious over the cited prior art.

With respect to claim 26, it is asserted that the loopless felt materials of the prior art would inherently provide at least some “footstep-sound-absorbing properties.” Therefore, claim 26 is also rejected.

8. Claims 10-14 and 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,298,624 issued to Pacione in view of DE 196 46 318 issued to Hammer and in further view of EP 988 808 issued to Celliers et al.

As noted above, Pacione teaches a double-sided hooked anchor sheet. Specifically, the anchor sheet has a plurality of hooks on its upper surface for connection to a carpet backing material and a plurality of hooks on its lower surface for connection to a lower layer, such as a cushion underlay (col. 13, lines 48-64). Pacione teaches said hook and loop technology for said anchor sheet, but also explicitly teaches joining by any conventional method (col. 13, line 64-col. 14, line 6). Thus, it would have been obvious to one of ordinary skill in the art to employ the Hammer micro-adhesive closure and loopless carpet and flooring materials in order to eliminate the need for looped carpet backs and looped cushion underlays.

Additionally, it would have been obvious to have the double-sided hooked surfaces be different in some manner, such as shape, dimension, and/or spacing in order to provide a difference in peel strength between the two interfaces and /or to allow interlocking with a variety of receiving (i.e., loopless) materials. For example, Celliers discloses a hook fastening material comprising differing hook shapes or dimensions (abstract and pages 3-4, paragraph [0020]). The hook fastener of Celliers is able to effectively engage with different receiving surfaces and exhibits a differential in peel strengths when engaged with said receiving surface (page 2,

paragraphs [0007] and [0008]). Therefore, applicant's claims 10-14, 19, and 23-25 are rejected as being obvious over the cited prior art.

Regarding claims 20-22, while the cited prior art fails to explicitly teach the claimed loopless materials, said materials would have been readily obvious to one of ordinary skill in the art. As long as a material is loopless and capable of engaging with the interlocking elements or hooks, said loopless material would be suited for the invention. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 20-22 are rejected as being obvious over the cited prior art.

With respect to claim 26, it is asserted that the loopless materials of the prior art would inherently provide at least some "footstep-sound-absorbing properties." Therefore, claim 26 is also rejected.

9. Claims 10-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,699,560 issued to Schulte in view of US 5,753,336 issued to Stull and US 6,298,624 issued to Pacione and in further view of EP 988 808 issued to Celliers et al. [Note the Petition Decision dated 04/15/05, which sets the new filing date of the present application as March 18, 2005, allows for the Schulte reference to now be prior art against applicant.]

Schulte discloses a system for installing floor carpets including a carpet having a nap side and a loopless backside, an anchor sheet of a micro-adhesive closure with interlocking elements in the form of thickened fingers (abstract). The interlocking elements may have concave depressions for receiving adhesive, such as an acrylate-based adhesive (col. 2, line 62-col. 3, line

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- 4). The loopless carpet backing may be the same materials claimed by applicant (Schulte, claims 3-9).

Thus, Schulte teaches the presently claimed invention with the exception that (a) the anchor sheet of interlocking elements is double-sided and (b) the interlocking elements have at least one of different shapes, different dimensions, and different relative spacings compared to the opposite interlocking surface. However, as discussed above, the knowledge of double-sided carpet underlays or anchor sheets are evidenced by Stull, Figures 7 and 8 and Pacione, Figure 31. Thus, it would have been obvious to modify the Schulte invention by providing a double-sided interlocking element underlay material. Motivation to do so would be to provide releasable engagement of the carpet to a flooring underlay without the use of an adhesive or a special receiving surface of said flooring underlay.

Additionally, it would have been obvious to have the double-sided hooked surfaces be different in some manner, such as shape, dimension, and/or spacing in order to provide a difference in peel strength between the two interfaces and /or to allow interlocking with a variety of receiving (i.e., loopless) materials. For example, Celliers discloses a hook fastening material comprising differing hook shapes or dimensions (abstract and pages 3-4, paragraph [0020]). The hook fastener of Celliers is able to effectively engage with different receiving surfaces and exhibits a differential in peel strengths when engaged with said receiving surface (page 2, paragraphs [0007] and [0008]). Therefore, applicant's claims 10-25 are rejected as being obvious over the cited prior art.

With respect to claim 26, it is asserted that the flooring materials of the cited prior art would inherently provide at least some “footstep-sound-absorbing properties.” Therefore, claim 26 is also rejected.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER